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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NERISSA MUNSON,

Plaintiff,

-against-

JASON DIAMOND, JOHN PARLATORE, PRESERVE 24 LLC, AEGIS HOLDING HOUSTON LLC, AEGIS HOLDING LLC, METROPOLITAN COFFEE & CONCESSIONS LLC,

Defendants.

15-CV-00425 (DAB) (BCM)

REPORT AND RECOMMENDATION TO THE HON. DEBORAH A. BATTS

BARBARA MOSES, United States Magistrate Judge.

Plaintiff Nerissa Munson was a bartender at Preserve 24, a now-defunct New York restaurant and bar. She filed this action on January 1, 2015, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (Title VII), the New York State Human Rights Law, N.Y. Exec. L. § 296 (NYSHRL), and the New York City Human Rights Law, N.Y.C. Admin. Code § 8-502 (NYCHRL), alleging that she was sexually harassed by her direct supervisor. On February 18, 2016, the Honorable Deborah A. Batts granted plaintiff's motion for a default judgment as to defendants Preserve 24 LLC, Aegis Holding Houston LLC (Aegis Houston), Aegis Holding LLC (Aegis Holding), and Metropolitan Coffee & Concessions LLC (Metropolitan) (collectively the LLCs), and referred the case to me to conduct a damages inquest. For the reasons that follow, I respectfully recommend that plaintiff be awarded $15,000 in compensatory damages, $30,000 in punitive damages, $52,750 in attorneys' fees, and $4,271.41 in costs, all to be paid by Preserve 24 LLC, and that her claims against the remaining LLCs be dismissed.[1]

[1] In her pleading, plaintiff refers to defendant Preserve 24 LLC as "Preserve 24," which is also how she refers to the restaurant where she worked. *See, e.g.*, Compl., filed Jan. 21, 2015 (Dkt. No. 1), ¶¶ 10, 12. In the interest of clarity I will call the restaurant "Preserve 24" and the defendant "Preserve 24 LLC."

I. PROCEDURAL BACKGROUND

Munson resigned from her position as a bartender at Preserve 24 on January 26, 2014, after working there for less than two months. *See* Prop. Findings, filed Apr. 4, 2016 (Dkt. No. 24), ¶ 38. On April 6, 2014, she filed a Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that "Preserve 24" and her supervisors at the restaurant, Jason Diamond and John Parlatore, discriminated against her on the basis of sex. Compl. ¶ 8; Decl. in Support, filed Dec. 29, 2015 (Dkt. No. 19), Ex. D; Prop. Findings Ex. B. In June 2014, Preserve 24 closed for business. Prop. Findings ¶ 23. On January 21, 2015, Munson commenced this action, naming Diamond, Parlatore, and all four LLCs as defendants. On April 4, 2015, she served Parlatore via his mother-in-law. (Dkt. No. 3, at ECF page 6.) On April 7, 2015, she served the LLCs via the New York Secretary of State. (Dkt. No. 3, at ECF pages 1-3, 5.) She never served Diamond.[2] Only Parlatore appeared and answered. (Dkt. No. 5.)[3]

Pursuant to a referral from Judge Batts, a mediation session was scheduled for September 30, 2015. (Dkt. No. 6.) However, on August 25, 2015, at Munson's request (Dkt. No. 8), the Clerk of the Court issued Certificates of Default with respect to Metropolitan, Aegis Holding, Aegis Houston, and Preserve 24 LLC. (Dkt. Nos. 9-12.) Thereafter, also at Munson's request, Judge Batts adjourned the mediation *sine die*. (Dkt. No. 14.)

On December 29, 2015, Munson moved for default judgment as to the LLCs. (Dkt. No. 18.) Because of her failure to serve Diamond with process, she did not seek a default as to him.

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[2] From March 11 through May 14, 2015, Munson made several attempts to serve Diamond with process, but does not claim to have succeeded. (*See* Dkt. No. 3-1.)

[3] In a status letter addressed to Judge Batts, dated September 24, 2015 (Dkt. No. 13), plaintiff's counsel stated that "the only appearing defendant, Jason [sic] Parlatore, is not the main target in this action and there is discussion with his counsel about a possible discontinuance in the matter." No discontinuance was ever filed. Nor has there been any other activity by or concerning him. Consequently, as of the date of this Report and Recommendation Parlatore remains a defendant.

See Decl. in Support ¶ 2 & n.2; Prop. Findings ¶ 10 & n.2. Although plaintiff mailed copies of her motion papers to all of the LLCs (*see* Dkt. No. 19-8), the copies mailed to Aegis Holding (at an address in San Francisco) and Aegis Houston (at an address in New York) were returned, marked "unable to forward." *See* Pl. Ltr., dated Jan. 26, 2016 (Dkt. No. 20), at 1, Ex. 1.

On February 18, 2016, Judge Batts granted plaintiff's motion for a default judgment against the LLCs and referred the matter to me for a damages inquest. (Dkt. No. 22.) On February 19, 2016, I directed Munson to file her Proposed Findings of Fact and Conclusions of Law, including all affidavits and documentary evidence necessary to support her claimed damages, no later than April 4, 2016. (Dkt. No. 23.) I also directed plaintiff to file proof of service of the Proposed Findings and my February 19 order. *Id.* Munson timely filed her Proposed Findings, together with proof of service of the Proposed Findings, but she did not file a proof of service of the February 19 order itself. *See* Prop. Findings at 22.

None of the LLCs responded to Munson's Proposed Findings.

Since no party has requested a hearing on the issue of damages, and since the LLCs failed to submit any written materials, I have conducted the inquest based solely upon the materials submitted by plaintiff. *See Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) ("affidavits, evidence, and oral presentations by opposing counsel" constitute a "sufficient basis from which to evaluate the fairness of the . . . sum" without the need for a hearing on damages); *Lenard v. Design Studio*, 889 F. Supp. 2d 518, 524, 526-27 (S.D.N.Y. 2012) (adopting Magistrate Judge's report and recommendation on damages, issued after referral for inquest following default, without an evidentiary hearing).

II. JURISDICTION

"Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied." *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987); *see also* 5B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure,* § 1353 (3d ed. 2004) (service of process is "the means by which a federal court gives notice to the defendant and asserts jurisdiction over him"). Where the defendant has defaulted, the plaintiff must establish adequate service in order to obtain a default judgment. *See Sheldon v. Plot Commerce*, 2016 WL 5107072, at *6 (E.D.N.Y. Aug. 26, 2016), *report and recommendation adopted*, 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016) ("failure to adequately prove proper service of court documents under Rule 4 bars the entry of a default judgment"); *Lliviganay v. Cipriani 110 LLC*, 2009 WL 1044606, at *1 (S.D.N.Y. Apr. 14, 2009) (lack of proof of proper service "is an independent obstacle to a default judgment").

Fed. R. Civ. P. 4(h)(1)(A) and 4(e)(1) state that service may be made on a domestic or foreign corporation by following state law in the state where the district court is located. Under New York law, a domestic LLC, as well as a foreign LLC authorized to do business in New York, may be served by personally delivering "duplicate copies" of the summons and complaint to the New York Secretary of State and paying the statutory fee. N.Y. Ltd. Liab. Co. L. § 303(a). There is no mailing or other follow-up requirement. *Id.*

Plaintiff served all four LLCs by this method. (Dkt. No. 3, at ECF pages 1-3, 5.) However, only three of them – Preserve 24 LLC, Aegis Houston, and Metropolitan – are alleged to be New York LLCs. Compl. ¶¶ 10, 11, 17. Aegis Holding is a California LLC, *id.* ¶ 14, and there is no allegation that it is authorized to do business in New York. Service upon the New York Secretary of State in accordance with § 303(a) was therefore ineffective as to Aegis Holding.[4] Because Aegis Holding was never properly served, I respectfully recommend that the order granting plaintiff's motion for a default judgment (Dkt. No. 22) be vacated as to Aegis Holding.

III. LIABILITY

A. Legal Standards

Following a default, the district court must accept all of the well-pleaded factual allegations in the plaintiff's complaint as true, except those relating to damages. *See Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009); *Cotton v. Slone*, 4 F.3d 176, 181 (2d Cir. 1993); *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992); *Wilen v. Alt. Media Net., Inc.*, 2004 WL 2823036, at *1 (S.D.N.Y. Dec. 3, 2004), *report and recommendation adopted*, 2005 WL 167589 (S.D.N.Y. Jan. 26, 2005). If the well-pleaded factual allegations establish the defaulting parties' liability, the only remaining issue is whether plaintiff has provided adequate support for her requested relief. *See Gucci Am., Inc. v. Tyrrell-Miller*, 678 F. Supp. 2d 117, 119 (S.D.N.Y. 2008) (citing *Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 155 (2d Cir. 1999)). As set forth below, the well-pleaded facts contained in Munson's Complaint, taken together, are sufficient to establish liability against Preserve 24 LLC, but not against any of the other LLCs.

B. Factual Allegations

Munson was hired as a bartender at Preserve 24 in November 2013 and began working at the restaurant on December 6, 2013. Compl. ¶¶ 19, 24. Her employer was Preserve 24 LLC.

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[4] Before serving the Secretary of State, plaintiff mailed the summons and Complaint to Aegis Holding in San Francisco. (Dkt. No. 3, at ECF page 4.) However, there is no provision of New York law authorizing service in this manner. *See* N.Y. Ltd. Liab. Co. L. § 303; N.Y. C.P.L.R. § 311-a.

Id. ¶ 18. She was interviewed for the job by Diamond, the restaurant's general manager, who then became her direct supervisor. *Id.* ¶¶ 18, 20-22. Diamond was also an employee of Preserve 24 LLC. *Id.* ¶ 7. Throughout December 2013, plaintiff worked every Friday through Sunday, and in January 2014, she worked every Wednesday through Sunday. *Id.* ¶ 25. She resigned on January 26, 2014. *Id.* ¶ 33; *see also* Prop. Findings ¶ 38.

Munson's claims all arise out of the conduct of her supervisor. Compl. ¶¶ 20-28. Diamond repeatedly grabbed Munson's buttocks and made statements such as, "You've got a hot ass," "You're so fucking hot," "Is your pussy waxed?" and "Let's go fuck." *Id.* ¶¶ 23-26. On several occasions when Munson was behind the bar, Diamond rubbed the front of his body against the front of Munson's body. *Id.* ¶ 25. On one occasion, Diamond cornered Munson, saying: "Let's go fuck. I have the biggest cock you've ever seen. Is your pussy small or is it fat?" *Id.* ¶ 26. In response to this conduct, Munson walked away. *Id.* ¶¶ 23-24, 26. However, the harassment caused her to experience distress, anxiety, disturbed sleep, stomach problems, embarrassment, and migraines. *Id.* ¶ 31. She resigned from Preserve 24 because she felt intimidated, abused, anxious, and physically ill as a result of Diamond's conduct. *Id.* ¶ 33. Plaintiff's job performance was at all times "deemed to be satisfactory by her employer." *Id.* ¶ 19.

Munson seeks a declaration that defendants acted in violation of the law; compensatory damages for lost wages, mental anguish, humiliation, and loss of esteem in the amount of $450,000; punitive damages in the amount of $450,000; and costs and attorneys' fees in the amount of $4,271.41 and $70,335, respectively. Compl. ¶¶ 37, 39, 41; Prop. Findings ¶¶ 52, 56.

C. Title VII

Munson alleges that she was subjected to disparate treatment on the basis of her sex, *see* Compl. ¶ 20, and that defendant Diamond's conduct created a hostile work environment. *Id.* ¶¶ 30-

31. She also alleges that she was constructively discharged as a result of the harassment she experienced, all in violation of Title VII. *Id.* ¶¶ 33, 35-36.

To prevail on a disparate treatment claim under Title VII, a plaintiff must show that "(1) she is a member of a protected class; (2) her job performance was satisfactory; (3) she suffered adverse employment action; and (4) the action occurred under conditions giving rise to an inference of discrimination." *Raspardo v. Carlone*, 770 F.3d 97, 125 (2d Cir. 2014) (citation omitted). "A constructive discharge may constitute an adverse employment action 'when the employer, rather than acting directly, deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation.'" *Pollard v. N.Y. City Health & Hosps. Corp.*, 2016 WL 5108127, at *7 (S.D.N.Y. Sept. 20, 2016) (quoting *Morris v. Schroder Capital Mgmt. Int'l*, 481 F.3d 86, 88 (2d Cir. 2007)). "Working conditions are intolerable if they are so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." *Whidbee v. Garzarelli Food Specialties, Inc.*, 223 F.3d 62, 73 (2d Cir. 2000).

To prevail on a hostile work environment claim, a plaintiff must show that "the workplace [was] permeated with discriminatory intimidation, ridicule, and insult that [was] sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal citations and quotation marks omitted). The plaintiff in such a case need not prove that her employment was terminated (constructively or otherwise), nor that her status in the workplace was "formally" altered, *Gregory v. Daly*, 243 F.3d 687, 691 (2d Cir. 2001), *as amended* (Apr. 20, 2001), "so long as the discriminatory conduct at issue is 'severe or pervasive enough to create an objectively hostile or abusive work environment.'" *Id.* (quoting *Harris*, 510 U.S. at 21). To prevail on a "compound" hostile environment-constructive discharge claim, the plaintiff "must show working conditions so intolerable that a reasonable person would have felt compelled to resign." *Pa. State Police v. Suders*, 542 U.S. 129, 147 (2004).

If the hostile environment was "created by a supervisor with immediate (or successively higher) authority over the employee," the employer is "subject to vicarious liability" for that supervisor's conduct. *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *see also Redd v. New York Div. of Parole*, 678 F.3d 166, 182 (2d Cir. 2012) ("An employer is presumptively liable for sexual harassment in violation of Title VII if the plaintiff was harassed . . . by someone with supervisory [] authority over the plaintiff.").

Munson's factual allegations, summarized above, adequately establish that Diamond's conduct created a hostile working environment for which her employer, Preserve 24 LLC, was liable. *See Garcia v. N.Y.C. Health & Hosp. Corp.*, 2016 WL 4097850, at *6 (S.D.N.Y. July 26, 2016) (Batts, J.) (three instances of inappropriate touching without consent, and one sexual proposition, were sufficient to allege a hostile work environment). Moreover, the nature of the abuse, together with the fact that Diamond was plaintiff's direct supervisor and manager of the restaurant, left plaintiff little recourse but to resign. Plaintiff was never provided with any handbooks or other policy documents prohibiting sexual harassment in the workplace, nor given any training regarding her recourse, if any, for such misconduct. Compl. ¶ 29. I therefore recommend that the District Court find Munson's allegations sufficient to make out a hostile environment-constructive discharge claim under Title VII against Preserve 24 LLC.

D. NYSHRL and NYCHRL

Munson's allegations are also sufficient to make out claims against Preserve 24 LLC under the NYSHRL and the NYCHRL. "A well-pled Title VII discrimination . . . claim is sufficient to support a corresponding claim under the NYSHRL, as well as under the NYCHRL, which provides even broader protection than its federal and state counterparts." *Styka v. My Merchants Servs. LLC*, 2016 WL 3866550, at *2 (E.D.N.Y. July 13, 2016) (citations omitted). Consequently, the well-pleaded factual allegations set forth above are also sufficient to establish Preserve 24 LLC's liability under the NYSHRL and NYCHRL.

E. Liability of Other LLCs

In order to state a claim under Title VII, the NYSHRL, or the NYCHRL, the plaintiff must establish an "employer-employee relationship" with each defendant. *Harris v. NYU Langone Med. Ctr.*, 2013 WL 3487032 at *11 (S.D.N.Y. July 9, 2013), *modified on other grounds and adopted by* 2013 WL 5425336 (Sept. 27, 2013) (collecting cases). Liability "is limited to those who 'control some aspect of an employee's compensation or terms, conditions, or privileges of employment.'" *Harris*, 2013 WL 3487032 at *11 (quoting *Shamilov v. Human Res. Admin.*, 2011 WL 6085550, at *5 (S.D.N.Y. Dec. 6, 2011)).

Munson clearly alleges that she was employed by Preserve 24 LLC, which also employed Diamond as her supervisor. Compl. ¶¶ 5, 7, 18, 20. However, she does not allege that any of the other defendant LLCs was her employer or controlled the terms of her employment. Instead, she argues that they are sufficiently "intermingled" with Preserve 24 LLC to be held vicariously liable, along with it, for Diamond's conduct. *See* Prop. Findings ¶¶ 4-9 & n.1. I construe plaintiff's argument as an attempt to invoke the "integrated enterprise" doctrine, *see Parker v. Columbia Pictures Indus.*, 204 F.3d 326, 341 (2d Cir. 2000), under which an entity which is "not the plaintiff's direct employer" may nonetheless be liable, under certain circumstances, for the illegal acts of another entity. *Id.* However, for the reasons that follow, I find that the well-pleaded facts set forth in the Complaint are insufficient to establish liability against Aegis Holdings, Aegis Houston, or Metropolitan on this (or any other) theory.[5]

1. Legal Standards

"To prevail in an employment action against a defendant who is not the plaintiff's direct employer, the plaintiff must establish that the defendant is part of an 'integrated enterprise' with the employer." *Parker*, 204 F.3d at 341. In this Circuit, an "integrated enterprise" may exist "where the plaintiff is an employee of a wholly-owned corporate subsidiary" or "where the plaintiff's employment is subcontracted by one employer to another, formally distinct, entity." *Gulino v. New York State Educ. Dept.*, 460 F.3d 361, 378 (2d Cir. 2006). However, "[a] parent and subsidiary cannot be found to represent a single, integrated enterprise in the absence of evidence of (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." *Cook v. Arrowsmith Shelburne, Inc.*, 69 F.3d 1235, 1239 (2d Cir. 1995) (internal quotations and citation omitted). "Of the four factors, the Second Circuit emphasizes in particular the second – centralized control of labor relations – in which the critical question is 'What entity made the final decisions regarding employment matters related to the person claiming the discrimination?'" *Brown v. Daikin Am., Inc.*, 2011 WL 10842873, at *5 (S.D.N.Y. Aug. 19, 2011) (citing *Cook*, 69 F.3d at 1240).

[5] In addition, I note that plaintiff's EEOC Charge named only Diamond, Parlatore, and "Preserve 24." *See* Decl. in Support, Ex. D; Prop. Findings, Ex. B. Pursuant to 42 U.S.C. § 2000e-5(f)(1), a plaintiff may bring a civil claim under Title VII, after receiving a right to sue letter from the EEOC, only against a respondent "named in the charge." No such prerequisite exists under the NYSHRL or the NYCHRL. Consequently, it appears that Aegis Holding, Aegis Houston, and Metropolitan were improperly named as defendants with respect to plaintiff's Title VII claim.

2. Factual Allegations

According to the Complaint, Aegis Houston executed a lease agreement in 2010 for the property (at 177 East Houston Street, New York, New York) where Preserve 24 was located, and "owned, ran, operated, and/or managed" the restaurant. Compl. ¶¶ 12-13. Aegis Holding "held itself out as owner, operator and/or manager of the defendant restaurant [sic] Preserve 24." *Id.* ¶ 15. Aegis Holding also "held itself out as the owner, operator, and/or manager" of Metropolitan. *Id.* ¶ 16. Metropolitan, in turn, identified 177 East Houston Street as its address with the New York Secretary of State. *Id.* There are no other factual allegations in the Complaint concerning the interrelationship of these three LLCs with Preserve 24 LLC.[6]

3. No Integrated Enterprise Has Been Shown

Plaintiff fails to address, much less establish, any of the four *Cook* factors as to the non-employer LLCs, and thus fails to demonstrate that they were "integrated" with Preserve 24 LLC in a manner that renders them liable for Diamond's conduct. Her conclusory allegations that Aegis Houston "owned, ran, operated, and/or managed" "Preserve 24," and that Aegis Holding "held itself out as . . . the owner, operator and/or manager" of the restaurant, Compl. ¶¶ 12, 14-16, are insufficient. She provides no facts concerning the actual chain (or quantum) of ownership among or between any of the LLCs, and she never alleges that Preserve 24 LLC was wholly owned by any other defendant. Nor does she allege any interrelated operations, any centralized control of labor relations, or any common management. Courts in this District interpret "common management" to mean shared officers or directors. *See, e.g.*, *Brown*, 2011 WL 10842873, at *7. Munson's Complaint does not identify any of the officers or directors of any of the LLCs, does not allege that any of them served as such for more than one entity, and does not contain any other facts indicating that the LLCs shared common management. *See, e.g.*, Compl. ¶¶ 7, 20 (plaintiff's supervisors, Diamond and Parlatore, were employees of Preserve 24 LLC). Similarly, plaintiff fails to allege that her employment was subcontracted. *See id.* ¶ 18 ("Plaintiff was employed by defendant Preserve 24.").

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[6] Certain additional factual assertions are made for the first time in Munson's inquest submissions, including that Metropolitan lists 177 East Houston Street as its address for service of process with the New York State Department of State, and that it operates under the tradename "Preserve 24." *See* Prop. Findings ¶¶ 7-9. Similarly, plaintiff now asserts that Aegis Holding "identifies Metropolitan Coffee as a subsidiary operated and managing full-service restaurants in the New York City area including Preserve 24 on the Lower East Side of New York." *Id.* ¶ 9. Because these allegations do not appear in the Complaint, I cannot rely on them in order to determine the liability of any defendant. *See United States ex rel. Nat'l Dev. & Constr. Corp. v. U.S. Envtl. Universal Servs., Inc.*, 2014 WL 4652712, at *4 (S.D.N.Y. Sept. 2, 2014) ("[i]t is the . . . [c]omplaint, not the inquest submissions, that establishes defendants' liability") (quoting *Gutman v. Klein*, 2010 WL 4975593, at *10 (E.D.N.Y. Aug. 19, 2010)) (alterations in the original). I also note that the new assertions as to Aegis Holding stem from a highly dubious hearsay source: the publicly-available LinkedIn profiles of individuals identified in the Proposed Findings as Joel Sjostrom and Terrence Goggin. *Id.* ¶ 9. Mr. Sjostrom identifies himself, on LinkedIn, as a former officer of Metropolitan. *Id.* Ex. K. Mr. Goggin's LinkedIn page is discussed in, but not attached to, the Proposed Findings. *Id.* ¶ 9 & n.1.

Since Munson fails to allege facts sufficient to satisfy any of the criteria of the *Cook* common enterprise test, or to show that her employment was subcontracted, I conclude that only Preserve 24 LLC can be held liable for Diamond's conduct.[7] I therefore recommend, respectfully, that plaintiff's claims against the other LLCs be dismissed.

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[7] Munson also fails to allege facts sufficient to show that any of the defendants were "joint employers." "A joint employer relationship may be found where there is sufficient evidence that a defendant had immediate control over another company's employees. Relevant factors include the commonality of hiring, firing, discipline, pay insurance records, and supervision." *Rivera v. Puerto Rican Home Attendants Servs., Inc.*, 922 F. Supp. 943, 949 (S.D.N.Y. 1996) (citing *NLRB v. Solid Waste Servs. Inc.*, 38 F.3d 93, 94 (2d Cir. 1994)). "Where [the joint employer] doctrine is operative, an employee, formally employed by one entity, who has been assigned to work in circumstances that justify the conclusion that the employee is at the same time constructively employed by another entity, may impose liability for violations of employment law on the constructive employer, on the theory that this other entity is the employee's joint employer." *Arculeo v. On-Site Sales & Mktg., LLC*, 425 F.3d 193, 198 (2d Cir. 2005). Munson's Complaint contains no allegations concerning any of the indicia of control required before the joint employer doctrine may be applied.

DAMAGES

I. Legal Standards

Although "a party's default is deemed to constitute a concession of all well pleaded allegations of liability, it is not considered an admission of damages." *Greyhound Exhibitgroup v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992); *see also Gucci Am., Inc. v. Tyrell-Miller*, 678 F. Supp. 2d 117, 119 (S.D.N.Y. 2008) (citing *Credit Lyonnais Sec. (USA), Inc. v. Alcantara*, 183 F.3d 151, 155 (2d Cir. 1999)). The plaintiff must establish her entitlement to damages through admissible evidence. *See Braccia v. D'Blass Corp.*, 2011 WL 2848146, at *3 (S.D.N.Y. June 13, 2011), *report and recommendation adopted*, 2011 WL 2848202 (S.D.N.Y. July 18, 2011). Munson seeks: (i) compensatory damages in the amount of $450,000 pursuant to Title VII, the NYSHRL, and the NYCHRL; (ii) punitive damages in the amount of $450,000, pursuant to Title VII and the NYCHRL; (iii) attorneys' fees in the amount of $70,335 for the services of Rory J. Bellantoni and $31,675 for the services of Marie Louise Priolo; and (iv) costs in the amount of $4,271.41. Prop. Findings at 21. I address each category in turn.

II. Compensatory Damages

Under Title VII, "[v]ictims of employment discrimination are entitled to reasonable damages that would make the plaintiff whole for injuries suffered on account of unlawful employment discrimination." *Rodriguez v. Exp. World Wide LLC*, 2014 WL 1347369, at * 5 (E.D.N.Y. Jan. 16, 2014), *report and recommendation adopted*, 2014 WL 1350350 (E.D.N.Y. Mar. 31, 2014) (internal quotations and citations omitted). Such damages may include compensation for economic loss and for pain and suffering, and are also available under the NYSHRL and the NYCHRL. *See DeCurtis v. Upward Bound Intern., Inc.*, 2011 WL 4549412, at *3 (S.D.N.Y. Sept. 27, 2011) (quoting *Moore v. Houlihan's Rest., Inc.*, 2011 WL 2470023, at *4

(E.D.N.Y. May 10, 2011)) ("Violations of 'Title VII, NYSHRL, and NYCHRL entitle a plaintiff to compensatory damages for pecuniary loss as well as pain and suffering.'").

A. Lost Employment Opportunities

Munson attests that she is entitled to damages because she suffered "lost monies in the form of lost employment opportunities" as a result of her constructive discharge. Munson Aff., dated Dec. 8, 2015 (Dkt. No. 24-13), ¶ 5; *see also* Prop. Findings ¶ 38 (as a result of her constructive discharge, Munson "suffered lost employment opportunities and loss of income"). However, Munson fails to provide the Court with any hint as to what employment opportunities she lost, when she lost them, why they were lost, or what those opportunities would have paid. *See* Munson Aff. ¶ 5. As a result, I respectfully recommend that her request for damages based on lost employment opportunities be denied.

B. Back Pay

In her Complaint, Munson also seeks "lost wages" and "back pay," that is, compensation for the wages she lost when she was constructively discharged by Preserve 24 LLC. Compl. ¶¶ 37, 39, 41. "Back pay is a specific remedy for unlawful discrimination under Title VII," and it is also available under the NYSHRL and the NYCHRL. *See Najnin v. Dollar Mountain, Inc.*, 2015 WL 6125436, at *2 (S.D.N.Y. Sept. 25, 2015) (citing 42 U.S.C. § 2000e-5(g)(1)); *E.E.O.C. v. Bloomberg L.P.*, 29 F. Supp. 3d 334, 341 (S.D.N.Y. 2014). "The choice of whether to award back pay is left to the equitable discretion of the district court." *Gilbert v. Hotline Delivery*, 2001 WL 799576, at *2 (citing *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-16 (1975)). "Once a plaintiff has been deemed eligible for the remedy, the method of assessing back pay is also a matter for the court's discretion." *Id.* Typically, back pay is calculated as "the wages the employee would have earned from the date of discharge to the date of reinstatement, along with lost fringe benefits such as vacation pay and pension benefits." *United States v. Burke*, 504 U.S. 229, 239 (1992), *superseded by statute on other grounds*; *Noel v. New York State Office of Mental Health Cent. N.Y. Psychiatric Cent.*, 697 F.3d 209, 213 (2d Cir. 2012). Where, as here, reinstatement is not requested (or not possible), the plaintiff's entitlement to back pay is generally reduced or eliminated when she obtains, or could have obtained, employment elsewhere. *See* 42 U.S.C. § 2000e-5(g)(1) ("interim earnings or amounts earnable with reasonable diligence . . . shall operate to reduce the back pay otherwise allowable"); *Greenway v. Buffalo Hilton Hotel*, 143 F.3d 47, 54 (2d Cir. 1998) (vacating award of back pay, among other damages, for failure to mitigate).

In her Proposed Findings, however, Munson appears to abandon her claim for back pay. She does not provide the Court with any information concerning her wages or benefits at Preserve 24. Nor does she make any showing as to her employment search or history after her constructive discharge. With no evidence of plaintiff's earnings either before or after that discharge, it would be impossible for the Court to calculate the amount of any back pay to which she could be entitled. Therefore, I respectfully recommend that no back pay be awarded.

C. Emotional Distress

A prevailing plaintiff in a Title VII action is entitled to compensation for her "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." 42 U.S.C. § 1981a (b)(3). Similarly, the NYSHRL and the NYCHRL entitle plaintiffs to compensatory damages for pain and suffering. *Moore,* 2011 WL 2470023, at *4 (E.D.N.Y. May 10, 2011), *report and recommendation adopted*, 2011 WL 2462194 (E.D.N.Y. June 17, 2011). The Second Circuit sorts emotional distress claims into three categories: "garden-variety," "significant" and "egregious." *Rainone v. Potter*, 388 F. Supp. 2d 120, 122 (E.D.N.Y. 2005) (citation omitted); *Caravantes v. 53rd Street Partners, LLC*, 2012 WL 3631276, at * 22 (S.D.N.Y. Aug. 23, 2012).

> In garden-variety claims, the evidence of emotional harm is limited to the plaintiff's testimony, which describes his or her injuries in vague or conclusory terms, and fails to relate the severity or consequences of the injury. These claims typically lack extraordinary circumstances and are not supported by medical testimony. Significant emotional distress claims are based on more substantial harm or offensive conduct and may be supported by medical testimony, evidence of treatment by a healthcare professional, and testimony from other witnesses. Egregious emotional distress claims yield the highest awards and are warranted only where the employer's conduct was outrageous and shocking or affected the physical health of the plaintiff.

Maher v. All. Mortg. Banking Corp., 2010 WL 3516153, at *2 (E.D.N.Y. Aug. 9, 2010). "'Garden variety' emotional distress claims lacking extraordinary circumstances and without medical corroboration generally merit $5,000 to $35,000 awards." *Najnin*, 2015 WL 6125436, at *3; *see also Drice v. My Merchant Servs., LLC*, 2016 WL 1266866, at *7 (E.D.N.Y. Mar. 4, 2016) (same), *report and recommendation adopted*, 2016 WL 1266948 (E.D.N.Y. Mar. 31, 2016). "Important factors in assessing an appropriate amount to award for emotional suffering include 'the amount, duration, and consequences of the claimant's emotional distress.'" *Jowers v. DME Interactive Holdings Inc.*, 2006 WL 1408671, at *12 (S.D.N.Y. May 22, 2016) (quoting *Kuper v. Empire Blue Cross & Blue Shield*, 2003 WL 359462, at *14 (S.D.N.Y. Feb. 18, 2003)).

Munson's claim for emotional distress is supported by her affidavit, in which she attests that she "experienced and continue[s] to experience distress, mental anguish, loss of self-esteem, anxiety, disturbed sleep, stomach problems, embarrassment, and migraines." Munson Aff. ¶ 5. In addition, plaintiff states that she "felt intimidated, abused, anxious, [and] physically ill" as a result of Diamond's conduct. *Id.* However, Munson fails to provide any medical records, any corroborating evidence, or any evidence of "extraordinary circumstances," as that term is used in

Title VII cases.[8] Further, she was employed at Preserve 24 for less than two months. Accordingly, her emotional distress claims are "garden variety" claims. Other courts in this District have awarded emotional distress damages in the range of $15,000 based on similarly general testimony that a hostile work environment caused the plaintiff "continued stress, anger, sadness and frustration," and that the plaintiff suffered from depression, panic attacks, headaches, nausea, loss of appetite, hives, and severe bouts of insomnia, even after her employment was terminated. *Jowers,* 2006 WL 1408671, at *12 (collecting cases). Accordingly, I respectfully recommend that the District Judge award Munson $15,000 in emotional distress damages. *See also Drice*, 2016 WL 1266866, at *7 (awarding $20,000 for emotional distress based on plaintiff's testimony that she "felt then, and still continue[s] to feel offended, disturbed, and humiliated" and "suffered and continue[s] to suffer from severe anxiety and depression" due to defendant's sexual harassment within short period of employment); *Manson v. Friedberg*, 2013 WL 2896971, at *6 (S.D.N.Y. June 13, 2013) (awarding $10,000 for emotional distress for plaintiff's vague and conclusory testimony that she "had low self-esteem, felt 'unworthy' and 'was having a difficult time feeling trust'").

D. Punitive Damages

"Punitive damages are a discretionary moral judgment that the defendant has engaged in conduct that is so reprehensible that it warrants punishment." *Wiercinski v. Mangia 5, Inc.*, 787 F.3d 106, 115 (2d Cir. 2015) (internal quotations omitted). Although the NYSHRL does not provide for punitive damages, *see Farias v. Instructional Sys., Inc.*, 259 F.3d 91, 101 (2d Cir. 2001), such damages are available under Title VII and the NYCHRL. *See* 42 U.S.C. § 1981a(b)(1);

[8] Although Munson alleged that she received psychological treatment, Compl. ¶ 37, she submits no evidence to support that assertion and appears to have abandoned it for purposes of this inquest.

N.Y.C. Admin. Code § 8-502(a). Under the NYCHRL, punitive damages "may be awarded . . . if the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *DeCurtis*, 2011 WL 4549412, at *5 (quoting *Manzo v. Sovereign Motor Cars, Ltd.*, 2010 WL 1930237, at *2 (E.D.N.Y. May 11, 2010) (internal quotation marks omitted)). To recover punitive damages under either Title VII or the NYCHRL, "plaintiff must prove only that the employer intentionally acted with the knowledge that it may be acting 'in violation of' the law, even if it did not know it was 'engaging in discrimination.'" *Farias*, 259 F.3d at 101 (internal citations omitted); *see also Wiercinski*, 787 F.3d at 115; *Johnson v. Strive E. Harlem Emp't Grp.*, 990 F. Supp. 2d, 435, 450 (S.D.N.Y. 2014). The employer's state of mind may be "inferred from the circumstances," *Manzo*, 2010 WL 1930237, at *2, and "egregious or outrageous acts may serve as evidence supporting an inference" of the employer's evil motive or intent. *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 538 (1999).

Diamond's conduct, as described in the Complaint and imputed to Preserve 24 LLC, was sufficiently outrageous for any employer to conclude that Munson's rights were violated. *See DeCurtis,* 2011 WL 4549412, at *5 (defendant repeatedly touching plaintiff in a sexual manner, sending her sexually explicit emails, and making sexually explicit comments, was sufficiently outrageous that any reasonable employer must have known plaintiff's rights were violated); *see also Redd*, 678 F.3d at 177 (quoting *Worth v. Tyer*, 276 F.3d 249, 268 (7th Cir. 2001) ("direct contact with an intimate body part constitutes one of the most severe forms of sexual harassment")). As a result, I conclude that punitive damages are warranted. Further, because Diamond was a managerial agent of Preserve 24 LLC, and because Preserve 24 LLC cannot show that it made "good-faith efforts to prevent discrimination in the workplace," Diamond's acts may be imputed to Preserve 24 LLC for the purpose of awarding punitive damages. *Kolstad*, 527 U.S. at 545.

Munson seeks punitive damages in the amount of $450,000. Prop. Findings ¶ 56. Although some amount of punitive damages is warranted, based on Diamond's conduct, the amount sought is excessive, particularly in light of the relatively short period of time at issue and the fact that the individual who actually committed the outrageous conduct is not before the Court.[9] Moreover, punitive damages awards of "more than four times the amount of compensatory damages might be close to the line of constitutional impropriety." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003); *accord Greathouse v. JHS Sec. Inc.*, 2015 WL 7142850, at *8 (S.D.N.Y. Nov. 13, 2015). Accordingly, I respectfully recommend that the District Judge award $30,000 in punitive damages against Preserve 24 LLC. *See Styka*, 2016 WL 3866550, at * 4 (awarding $50,000 in punitive damages where supervisor made "crude verbal comments" and "physically forced himself on the plaintiff by kissing her or grabbing her breasts, thighs, or buttocks" for approximately five months); *DeCurtis,* 2011 WL 4549412, at *6 (awarding $75,000 in punitive damages against employer for repeated inappropriate touching and sexually explicit statements); *Walia v. Vivek Purmasir & Assocs. Inc.*, 160 F. Supp. 2d 380, 384, 392 (E.D.N.Y. 2000) (awarding $30,000 in punitive damages based in part on defendant's repeated grabbing of plaintiff's breasts).[10]

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[9] Diamond could not have been held personally liable to Munson under Title VII. Had he been properly served, however, he could have faced personal liability under the NYSHRL and the NYCHRL, including personal liability for punitive damages under the NYCHRL. *See Sowemimo v. D.A.O.R. Sec., Inc.*, 43 F. Supp. 2d 477, 490 (S.D.N.Y. 1999) ("employees may be held personally liable under the HRL and the NYCHRL (but not under Title VII) if they participate in the conduct giving rise to the discrimination claim").

[10] Title VII sets a cap on the aggregate amount of compensatory and punitive damages (excluding back pay) awarded to a plaintiff. Pursuant to 42 U.S.C. § 1981a(b)(3), the amount of that cap depends on the employer's size. According to plaintiff, "defendant Preserve 24 [LLC] has

E. Attorneys' Fees and Costs

A prevailing party may be awarded reasonable attorneys' fees and costs incurred in bringing claims under Title VII and the NYCHRL. 42 U.S.C. § 2000e-5(k); N.Y.C. Admin Code. § 8-502(f). "A 'reasonable fee' is a fee that is sufficient to induce a capable attorney to undertake the representation in a meritorious civil rights case." *DeCurtis*, 2011 WL 4549412, at *6 (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010)). "The Title VII and NYCHRL provisions are substantively and textually similar; therefore, the reasonableness of fees in a case would be analyzed the same way." *DeCurtis*, 2011 WL 4549412, at *6 (quoting *Moore*, 2011 WL 2470023, at *7 & n.10 (internal alterations omitted)). Furthermore, "the court has wide discretion in determining whether to award attorneys' fees and in determining the reasonableness of any such award." *Manson*, 2013 WL 2896971, at *9 (citing *Arbor Hill Concerned Citizens Neighborhood Assoc. v. Cty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2008)). "A court may also consider the awards given in similar cases within the district." *Becerril v. E. Bronx NAACP Child Dev. Ctr.*, 2009 WL 2611950, at *8 (S.D.N.Y. Aug. 18, 2009).

"The starting point for the determination of a reasonable fee is the calculation of the lodestar amount," *Quaratino v. Tiffany & Co.*, 166 F.3d 422, 425 (2d Cir. 1999), computed by multiplying the number of attorney hours reasonably expended by a reasonable hourly rate. In determining the number of hours reasonably expended, "the district court should exclude

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employed more than 15 employees in each of 20 or more calendar weeks in the current or preceding calendar year." Compl. ¶ 5. The Title VII damages cap applicable to employers with 15 to 100 employees is $50,000. 42 U.S.C. § 1981a(b)(3)(A). If the District Judge adopts my recommendation to award $15,000 in compensatory damages and $30,000 in punitive damages, the total damages award will be $45,000, which is within the Title VII cap. Neither the NYSHRL nor the NYCHRL imposes a cap on compensatory damages. *See Caravantes*, 2012 WL 3631276, at * 21 ("there is no cap on the amount of damages that can be recovered under the NYSHRL and NYCHRL").

excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims." *Id.* In determining a reasonable hourly rate, "the lodestar looks to 'the prevailing market rates in the relevant community.'" *Perdue*, 559 U.S. at 551 (quoting *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). Further, "courts may consider the customary billing rate charged by the attorney as well as if there was a rate specified in any retainer agreement." *Manson*, 2013 WL 2896971, at *10 (citing *Parrish v. Sollecito*, 280 F. Supp. 2d 145, 169-70 (S.D.N.Y. 2003)). "A court may also rely on 'its own knowledge of comparable rates charged by lawyers in the district." *Manson*, 2013 WL 2896971, at *10 (quoting *Tatum v. City of New York*, 2010 WL 334975, at *4 (S.D.N.Y. Jan. 28, 2010)). Courts in this District assess fees based on "the degree of success, the quality of the legal services provided, the makeup of the firm doing the work, and the years of experience of each attorney at the bar as well as in the specialty being litigated." *Johnson*, 2014 WL 308347, at *1.

"[P]recedent in the Southern District reveals that rates awarded to experienced civil rights attorneys over the past ten years have ranged from $250 to $600 [per hour], and that rates for associates have ranged from $200 to $350, with average awards increasing over time." *Tatum*, 2010 WL 334975, at *5 (quoting *Vilkhu v. City of New York*, 2009 WL 1851019, at *4 (E.D.N.Y. June 26, 2009) (collecting cases)); *accord Manson*, 2013 WL 2896971, at *5; *DeCurtis*, 2011 WL 4549412, at *8. Where there is a default judgment, however, lower rates are warranted due to the lack of opposition. *See Clark v. Gotham Lasik, PLLC*, No. 11-CV-1307, slip. op. (S.D.N.Y. Aug. 2, 2013), *report and recommendation adopted*, 2013 WL 4437220, at *7 (S.D.N.Y. Aug. 20, 2013); *see also Siracuse v. Program for the Dev. of Human Potential*, 2012 WL 1624291, at *28 (E.D.N.Y. Apr. 30, 2012) (lower rates are justified where case "involved defaults in which there was no opposition"); *Becerril*, 2009 WL 2611950, at *8 ("a single plaintiff discrimination case that was unopposed . . . warrants some reduction in the rates").

Here, plaintiff's counsel requests $102,010 in attorneys' fees and $4,271.41 in costs. *See* Prop. Findings at 21. The attorneys' fees consist of $70,335 for the work performed by senior counsel Rory J. Bellantoni, *see* Prop. Findings, Ex. M, Bellantoni's Fees, at 8, and $31,675 for the work performed by associate Marie Louise Priolo. *See id.*, Priolo's Fees, at 3.

Plaintiff's counsel submitted an eight-page summary detailing the experience of each attorney and the hours each expended on this action. Prop. Findings, Ex. M. Mr. Bellantoni has significant experience handling civil rights matters. *Id.* I conclude, however, that his requested hourly rate of $450 is too high in light of the relatively straightforward nature of this case and the fact of default. "[T]he range of fees in this District for 'seasoned civil rights litigators,' particularly those in small firms, is between $200/hr and $300/hr." *Pascuiti v. New York Yankees*, 108 F. Supp. 2d 258, 266 (S.D.N.Y. 2000); *accord Yea Kim v. 167 Nail Plaza, Inc.*, 2009 WL 77876, at *8 (S.D.N.Y. Jan. 12, 2009); *Manson*, 2013 WL 2896971, at *10. "Even including a standard inflation factor (as provided by the Bureau of Labor Statistics), the range for these 'seasoned' litigators would be $254-381 today." *Yea Kim*, 2009 WL 77876, at *8; *Manson*, 2013 WL 2896971, at *10; *see also Gurung v. Malhotra*, 851 F. Supp. 2d 583, 597 (S.D.N.Y.2012) ("Courts in this District have determined in recent cases that the range of appropriate fees for experienced civil rights and employment law litigators is between $250 and $450."). In this case, I respectfully recommend that the District Judge award Mr. Bellantoni $300 per hour, which is at the lower end of the range, as a result of the factors discussed above. *See Johnson*, 2014 WL 308347 (reducing to $400 the hourly rate of the lead counsel in a firm with eighteen attorneys in a case involving claims under Title VII, NYSHRL, and NYCHRL); *see also Manson*, 2013 WL 2896971, at *10 (reducing hourly rate to $300 for plaintiff's counsel after default in a case brought under Title VII and the NYSHRL, although counsel was "highly experienced and capable, having appeared on dozens of cases in this Court" and had "significant success for many of his clients"); *Najnin*, 2015 WL 6125436, at *5 (awarding $350 to plaintiff's counsel after default in a case brought under Title VII, NYCHRL, Fair Labor Standards Act, and New York Labor Law); *Liang Huo v. Go Sushi Go 9th Ave.*, 2014 WL 1413532, at *8 (S.D.N.Y. Apr. 10, 2014) (awarding $350 per hour to plaintiff's counsel, who "has been practicing law for almost 10 years" and "spends approximately 70% of his time litigating employment-related issues.").

Ms. Priolo, the associate who worked on this case, had been practicing law for approximately three years when the case was filed. Her requested hourly rate is $250, which I find reasonable. *See Galeana v. Lemongrass on Broadway Corp.*, 2014 WL 1364493, at *21 (awarding hourly rate of $250 to junior associate who focused on employment); *Johnson*, 2014 WL 308347, at *1 (awarding hourly rate of $250 to plaintiff's attorney with two years of experience who failed to supply any information about her bar admission); *DeCurtis*, 2011 WL 4549412, at *7-8 (awarding hourly rate of $275 to fifth-year associate who focused on employment); *Clark v. Gotham Lasik, PLLC*, 2013 WL 4437220, at * 7 (awarding hourly rate of $275 to fourth-year associate); *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 597 (S.D.N.Y. 2012) (awarding hourly rate of $275 third-year associates).

I now turn to the question whether the hours expended by plaintiff's counsel were reasonable. "The Court should examine contemporaneous time records that identify, for each attorney, the hours expended on a task, 'with a view to the value of the work product of the specific expenditures to the client's case.'" *Angamarca v. Pita Grill 7 Inc.*, 2012 WL 3578781, at *12 (S.D.N.Y. Aug. 2, 2012) (quoting *Luciano v. Olsten Corp.*, 109 F.3d 111, 116 (2d Cir. 1997) (citation omitted)). "[I]n dealing with items that are 'excessive, redundant, or otherwise unnecessary, . . . the court has discretion simply to deduct a reasonable percentage of the number of hours claimed as a practical means of trimming fat from a fee application.'" *Francois v. Mazer*, 523 Fed. Appx. 28, 29 (2d Cir. 2013) (quoting *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (citations and internal quotation marks omitted)). Furthermore, a district court "need not 'set forth item-by-item findings concerning what may be countless objections to individual billing items.'" *Francois*, 523 Fed. Appx. at 29 (quoting *Lunday v. City of Albany*, 42 F.3d 131, 134 (2d Cir. 1994)).

Having reviewed counsel's billing records, I conclude that the hours expended on this case (156.3 for Mr. Bellantoni and 126.7 for Ms. Priolo, *see* Prop. Findings, Ex. N) are too high, particularly given that the Complaint fails to state any claims against three of the four LLCs now before the Court and the inquest submissions fail to make any showing as to plaintiff's economic damages. These issues warrant a 33% reduction in the total number of working hours. *See De Los Santos v. Just Wood Furniture, Inc.*, 2010 WL 445886, at *3 (S.D.N.Y. 2010) (reducing fee by 25% "to reflect the fact that he succeeded on certain claims only against [one of the defendants]"); *Angamarca*, 2012 WL 3578781, at *13 (reducing attorneys' fees by 15% in simple case); *Johnson*, 2014 WL 308347, at *1 (reducing attorneys' fees by 10% due to unnecessary tasks). Therefore, I respectfully recommend that the District Judge award fees to plaintiff's counsel limited to 190 total working hours, consisting of 105 hours expended by Mr. Bellantoni (at $300 per hour) and 85 hours expended by Ms. Priolo (at $250 per hour). This results in a fee award of $31,500 for Mr. Bellantoni's time and $21,250 for Ms. Priolo's time.

Finally, plaintiff's counsel seeks $4,271.41 in costs incurred, including copying fees, postage fees, filing fees, and investigation fees. *See* Prop. Findings, Ex. N. I agree that costs should be awarded in this amount. *See DeCurtis*, 2011 WL 4549412, at * 9 ("The costs sought here are of the type normally incurred and charged to clients, including filing fees, postage fees, service of process fees, and costs associated with legal research and administrative tasks.").

CONCLUSION

For the foregoing reasons, I respectfully recommend that the District Judge award plaintiff Munson $15,000 in compensatory damages for emotional distress, $30,000 in punitive damages, $52,750 in attorneys' fees, and $4,271.41 in costs, all to be assessed against defendant Preserve 24 LLC. I further recommend that the District Judge vacate the order granting plaintiff's motion for a default judgment (Dkt. No. 22) as to defendant Aegis Holding LLC, because it was never properly served, and dismiss all claims against defendants Aegis Holding LLC, Aegis Holding Houston LLC, and Metropolitan Coffee & Concessions LLC, because the Complaint fails to state any cognizable claim against them. Finally, I respectfully recommend that the District Judge dismiss plaintiff's claims against defendant Parlatore for failure to prosecute or, in the alternative, provide plaintiff with 30 days within which to show cause why those claims should not be dismissed.[11]

NOTICE OF PROCEDURE FOR FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen days from this date to file written objections to this Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). *See also* Fed. R. Civ. P. 6(a) and (d). Any such objections shall be filed with the Clerk of the Court, with courtesy

[11] As noted above, there has been no activity by or concerning Parlatore since September 24, 2015, when plaintiff's counsel stated in a letter to the Court that Parlatore was "not the main target in this action" and advised that there was "discussion with his counsel about a possible discontinuance in the matter." (Dkt. No. 13.)

copies delivered to the Hon. Deborah A. Batts at 500 Pearl Street, New York, New York 10007, and to the chambers of the undersigned magistrate judge. Any request for an extension of time to file objections must be directed to Judge Batts. Failure to file timely objections will preclude appellate review. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010).

Dated: New York, New York
June 1, 2017

SO ORDERED.

BARBARA MOSES
United States Magistrate Judge